**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT :**

**THE HONOURABLE MR. JUSTICE M.N.KRISHNAN**

**WEDNESDAY, THE 10TH OCTOBER 2007 / 18TH ASWINA 1929**

**Tr.P(C).No. 214 of 2007()**
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**OS.687/2005 of MUNSIFF COURT, NORTH PARAVUR**
**.....**

**PETITIONER**
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**SHANTO, AGED 40 YEARS, S/O. THARAYIL VEETTIL, KURIYAPPU, CHERUKADAPPURAM KARA, KUTHIYATHODU NORTH P.O., PUTHENVELIKKARA VILLAGE, PARAVUR TALUK.**

**BY ADV. SRI.P.K.SAJEEV**

**RESPONDENT:**
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**SHIJI, S/O. CHIRYATHVEETTIL THOMAS, DESOM KARA, CHENGAMANAD VILLAGE, ALUVA TALUK.**

**BY**

**THIS TRANSFER PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 10/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

**M.N. KRISHNAN, J.**

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**Tr.P.C. NO. 214 OF 2007**

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**Dated this the 10th day of October, 2007.**

**J U D G M E N T**

This Transfer Petition is filed by the husband to transfer O.S.687/05 pending before the Munsiff Court, North Paravur to the Family Court, Ernakulam where OP 315/06 is filed for a declaration. O.S.687/05 had been filed by the wife against the husband and his brother and mother for a partition. The contention of the wife is that the property belong jointly to her and the brother of the husband and therefore she is entitled to half right over the property and as the husband and the mother are also attempting to oust her they are also made parties to the suit. On the other hand it is the contention of the husband that though the property is purchased in the name of wife and his brother, the wife is only a name lender and no title has passed on to her and that she is not entitled to any relief in the suit and to get

such a declaration he has filed a suit before the Family Court, Ernakulam. Now, the short point that arises for determination is whether the case pending before the Munsiff Court is to be transferred to the Family Court and whether such a transfer is permissible under Section 7(1) (c) the Family court's Act. In the decision reported in ***Santha v. Sree kumar (1999 (3) KLT 261)*** this Court had taken the view that a suit from a Sub Court cannot be transferred to a Family Court. Almost a case with similar sets of facts was considered by the Court in the decision reported in ***Krishnan Nambudiri v. Thankamani (1994 (1) KLT 607)*** where this Court had taken a view that when the interest of a third person other than the party to the marriage is involved and requires adjudication then the civil Court will never lose its jurisdiction and therefore it cannot be transferred. So in the light of these two decisions and the fact that the interest of a third party other than the party to the marriage is involved it is not correct to transfer the case pending before a civil Court to the Family Court for adjudication. Therefore, the

transfer petition is dismissed. But I make it clear that if there are other legal remedies available to the party with respect to the case pending before the Family Court, he is at liberty to do so.

**M.N. KRISHNAN, JUDGE.**

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